WORKERS' COMPENSATION ADVISORY COUNCIL

MINUTES ~~ SEPTEMBER 28, 2000 MEETING [1:00 P.M.] 710 JAMES ROBERTSON PARKWAY HEARING ROOM, FIRST FLOOR ANDREW JOHNSON TOWER NASHVILLE, TENNESSEE

The meeting was called to order by Mr. Dale Sims, State Treasurer's Designee.

Voting members in attendance:

Mr. Jack Gatlin

Mr. Dave Goetz

Mr. James G. Neeley

Mr. Bob Pitts

Nonvoting members in attendance:

Ms. Jacqueline Dixon

Mr. Tony Farmer [by telephone conference call]

Ms. Abbie Hudgens [by telephone conference call]

Mr. Jerry Mayo

Ex officio members in attendance:

Ms. Sue Ann Head, Workers' Compensation Administrator
Department of Labor and Workforce Development
[designee for Commissioner Michael E. Magill]
Commissioner Anne Pope, Department of Commerce and Insurance

Also present:

M. Linda Hughes, Executive Director David Wilstermann, Research Analyst

Mr. Sims called the meeting to order and welcomed Mr. Dave Goetz as a voting member representing employers. He also noted Mr. James G. Neeley and Mr. Steven Turner had been reappointed to the Advisory Council. After these opening remarks, the minutes of the Advisory Council meetings on December 6, 1999 and February 11, 2000 were unanimously approved.

1. INSURANCE MARKET UPDATE

Mr. Sims noted during the last 90 days, the National Council on Compensation Insurance, Inc. [NCCI] approached the State requesting advice as to whether the State preferred the NCCI to make a lost cost filing this year. The Advisory Council members were consulted as was the Council's actuary, Mr. Greg Alff. The Department of Commerce and Insurance also consulted with its actuary, Mr. Ed Costner. The Advisory Council advised the NCCI it had no strong desire to see a filing this year, acknowledging it was up to NCCI to make the decision as to whether it would make a filing or not. Inasmuch as the NCCI did not make a filing, the Executive Committee requested NCCI and the two actuaries who reviewed the preliminary Tennessee data to discuss the Tennessee data and answer any questions which the Advisory Council might have concerning the data behind the decision of the NCCI that a filing was not necessary.

Ms. Cathy S. Booth, Director of Regulatory Services - State Relations for the National Council on Compensation Insurance, Inc. was then recognized. Ms. Booth addressed the following issues: rate filing activity in neighboring states; countrywide and Tennessee accident year and calendar year combined ratios, and class reactivities. She reported the following filing activity by the NCCI in neighboring states for 2000:

Arkansas [VPP] - 4.5 % Arkansas [A/R] - 2.0 % Georgia {VPP] - 15.2 % Georgia [A/R] - 16.9 % Louisiana No Filing Mississippi [VPP] No Filing Mississippi [A/R] +4.2 % Missouri - 2.0 % South Carolina No Filing

In addition, there was no rate filing by NCCI in Iowa, New Hampshire, Rhode Island and South Dakota.

Ms. Booth explained the large decrease in Georgia was partially a result of there being no filing in the State of Georgia in 1999. The 1999 filing [requesting - 8.2%] was withdrawn after six months at the recommendation of Georgia's department due to the substantial delay the department faced in reviewing over 600 filings that year. She indicated Georgia feels their rate reduction is being driven by the discounting which is occurring. NCCI data indicates discounting of 22-23% is occurring in currently in the market.

She reported the following information concerning the 38 states in which NCCI made filings during the 1999-2000 filing season: the filing ranged from -5.0% to +5.0% in 33 of the states; in ten of the 33, the filings ranged from - 5.0% to +5.0%; out of the 33 states, no filing was made in 10 of them; in 5 of the 33, the filing would have been either less than -5.0% or greater than +5.0%.

The NCCI does not file in California, which had a +18.6% increase this year, with a

combined ratio of 160%. Mr. Mayo reported the increase which occurred in California may be a result of the California state fund is continuing to write coverage even though it is \$2 billion short.

Ms. Booth also reported nationwide information comparing 1998 to 1999 [source: Best's Aggregates & Averages] indicates a change in premium volume for all insurance lines of +1.9% and a change in workers' compensation of -1.3%. The countrywide net [the amount of insurance risk that is not reinsured] calendar year combined ratios for all lines were: 102% for 1997; 106% for 1998 and 108% for 1999. The countrywide net combined ratios for workers' compensation were: 101% for 1997; 108% for 1998 and 116% for 1999. Ms. Booth reported the 1999 ultimate accident year net combined ratio for workers' compensation reached a record level [134%] despite stable loss costs. Mr. Alff pointed out the accident year data is NCCl's fully developed estimate of ultimate and that the actual combined accident year ratio will be unknown for a number of years. Calendar year numbers are fixed and accident years will continue to vary as ultimate is developed. In his opinion, it is safe to say the accident year estimates are now fairly locked through accident year 1996.

Mr. Ed Costner indicated the difference between the calendar year combined ratio of 116% and the accident year combined ratio of 134% is the reserve changes from prior years which allow the carrier to include any reserve releases for older policy periods into the current calendar year. Therefore, calendar year information does not reflect only what happened in 1999. The accident year ratio reflects only what happened in 1999. For 1999, the cost of losses plus expenses was 134% of premium which is a substantial underwriting loss. In his opinion the accident year combined ratio of 134% is a direct result that the premiums charged were inadequate. If the loss costs were adequate, this would mean the carrier did not add enough for expenses or that they discounted off what they did file with the State that they have placed themselves in a bad position. He stated the combined ratio for accident year 1999 is indicative that the market has been doing poorly.

Mr. Alff noted the calendar year figures are fixed while accident year losses continue to change over time as the claims mature. Mr. Costner noted he had heard the countrywide "estimate of ultimate" for accident year 1999 is 135.8% and throughout the year NCCI has continued to revise the estimate upward. Ms. Booth confirmed this upward trend as the "estimate of ultimate" was 130% at the end of June. Mr. Neeley asked what single factor is driving the combined ratio 134%. Ms. Booth, responded "pricing"; Mr. Alff responded "competition" and Mr. Costner stated "premiums are too low". Mr. Sims indicated the response that premiums are too low does not mean, in Tennessee, that the approved loss costs were too low but, rather, it may mean the deviations permitted were too aggressive.

Mr. Alff reminded the Advisory Council that Tennessee does not necessarily have the same high loss ratio as the data reported by Ms. Booth. Mr. Costner noted if the carriers decide to deviate too much from the approved loss costs this would be the carrier's problem. Mr. Sims reminded the members it is the Advisory Council's obligation to come as close to estimating the loss costs as possible and if insurance companies take action which drive their combined ratios higher because they elect to price in a fashion which results in increased combined ratios this does not mean Tennessee has done a bad job of estimating the loss costs. Rather, the question is whether the State needs to take any action to address these higher combined ratios. Mr. Mayo stated until the Tennessee specific combined ratios are known it would be premature to take any action.

Ms. Booth reported the private carrier direct underwriting results for calendar year 1999 revealed a combined ratio for Tennessee of 93.6%, which is the fourth best of all the states. The average 1999 calendar year ratio for all the states was 121.3%; California was 160.6%. Mr. Costner expressed his opinion that while this information is interesting it is not credible because of the manner by which the individual insurers report the information by line of insurance and by state in their annual statements filed with the insurance commissioners.

Ms. Booth then presented the following information concerning the number of employer classes (out of a total of 600) that had +/-25% change in premiums after the implementation of the loss costs system: 1997 [240 classes]; 1998 [82 classes]; 1999 [18 classes] and 2000 [27 classes]. She explained the large number of affected classes in 1997 and 1998 was due to two factors: (1) in the administered pricing system, rates were increased on a flat factor basis and there were no adjustments to the class relativities at all; and (2) in the early 1990's NCCI was using three years of data and at present they are using five years of data. The 27 classes affected in 2000 represent 1,105 risks (employers) out of a total of 64,090 risks [1.7%]. These classes accounted for \$14,832,000 in standard premium out of a total standard premium in Tennessee of \$1,261,730,000. Because the NCCI did not make filings in several states in the past year, it has initiated a study to determine the impact of "no filing" on the various classes. She indicated the results of the study would be shared with the Advisory Council when available.

Ms. Booth then distributed a packet of information on the national health care market. She indicated the Tennessee workers' compensation data reviewed, which led NCCI to decide a filing was not necessary in Tennessee for 2001, revealed a 0% trend in indemnity and a +2.5% trend in medical. Policy year 1998 looked better than 1997 and accident year 1999 was better than accident year 1998.

Mr. Pitts inquired as to whether anyone had reviewed the Tennessee workers' compensation providers to determine if there were financial concerns. Mr. Costner reported Reliance Insurance Company, the fourth largest workers' compensation writer in Tennessee, is currently experiencing financial difficulty which could be a large problem. Others reported that Superior National and Frontier have also experienced financial problems. Mr. Benn Daley, Tennessee Department of Commerce and Insurance, reported approximately \$4,000,000 in claims from Superior National have been submitted to the Guaranty Fund.

A discussion ensued concerning insolvency of Tennessee workers' compensation carriers and the Tennessee Guaranty Fund. The Guaranty Fund is an assessment fund which pays the workers' compensation claims which are submitted to insolvent workers' compensation carriers. Mr. Mayo indicated he serves on the Guaranty Fund Board and David Bromel serves as its Executive Director. The Guaranty Fund has its own staff of adjusters who handle the claims and when a carrier is declared to be insolvent, the Guaranty Fund staff meets with the insolvent carrier and takes their claims files. He indicated the Guaranty Fund has had no complaints in the past concerning timeliness of payments and he anticipates none in the future.

Mr. Pitts expressed his concern regarding how long the Tennessee market can continue to

be strong in face of the national experience. He reported the general consensus the marketplace is that a large number of big companies have either reduced their level of discounting, or have ceased to write in the market at their previous levels or are not seeking new business. The Tennessee market has remained at its prior level competitively because a large number of regional carriers have entered the Tennessee market and have written business at the same level at which the larger companies have now ceased to write coverage. He questioned how long the regional carriers can continue a business plan which has now been abandoned by the larger carriers. He stated he is interested in discussing how the Advisory Council can be responsive in its actions when the market begins to harden competitively as the fundamental issue for the Advisory Council is to in a position to be responsive in its actions when the Tennessee market begins to harden competitively. He stated while it is very easy in an unregulated market to say "the carrier can do whatever he wants to"; however, to the extent the carrier is doing "dumb things" in the Tennessee market, consumers and businesses in this state suffer as it impacts the overall market.

Mr. Alff and Mr. Costner were each given an opportunity to comment. Mr. Alff stated he saw nothing in the NCCI data to indicate a dramatic change is happening in Tennessee. He expressed his agreement with Mr. Pitts' that if the smaller carriers continue the discounting which the larger carriers have moved away from there is reason to be concerned about where the market is heading which should be watched. He also stated that the reserve redundancies in the industry from prior years which have in the past allowed price competition to continue by holding calendar year loss ratios down even while accident year loss ratios were rising have about dissipated. The companies which have financial problems are rapidly becoming clear as they no longer have the ability to draw from reserve redundancies to fund current problems. Mr. Pitts asked Mr. Alff's opinion as to how the situation should be watched and over what frequency.

Mr. Alff indicated the Department of Commerce and Insurance records should be monitored to review the deviations from loss costs which are being filed by the carriers and to set a benchmark by which to monitor the deviations. He suggested if a carrier's filed deviation is dramatically different from the multipliers being filed by the most substantial writers of workers' compensation nationally then it would be reasonable and logical to request justification for the deviation. Mr. Mayo questioned using the largest carriers as an absolute benchmark because carrier size does not necessarily translate into good business.

The members then discussed the law which had been enacted to review rates which deviated from the filed loss cost. Mr. Sims reminded Advisory Council members the review law did sunset on June 30, 2000 and Mr. Daley pointed out this review process was not enacted until six months following the implementation of the loss costs system in Tennessee and the carriers which had filed loss costs multipliers prior to its enactment were not subject to the review process. Further discussion continued as to the information which might be available from the Department which could assist the Advisory Council to monitor the loss costs system in Tennessee in light of its responsibility to the General Assembly. Mr. Sims indicated he would suggest to Chairman Adams that he appoint a subcommittee to work with the Department of Commerce and Insurance to determine the information which could be produced for the Advisory Council on this issue.

Mr. Costner stated the lack of a filing this year by NCCImight indicate the Advisory Council and State did a good job in its recommendations last year. He did point out two areas for continued consideration by the Advisory Council. First, he expressed concern regarding the loss development indicated by the data. He pointed out this could indicate inflation is beginning to come back into the workers' compensation market. He reported some of his company's self-insured clients have seen an increase in the number of losses per \$100 of payroll. From the early to late 1990's the number of losses went down and there is some reason to believe they are beginning to go up again. Whether the experience of the self-insured clients is an anomaly or a trend he is unsure; however, he feels it bears watching. Second, he suggested since there was no filing this year it might be an appropriate time to consider returning to a January 1 effective date instead of the current March 1 effective date. If the March 1, 2001 effective date is retained for the next filing this will mean employers whose policies renew on January 1 will not have had a rate change for almost two years, which would be unfair.

2. DISCUSSION OF WORK PLAN - FALL 2000

Ms. Hughes discussed the items on the "draft" agendas for the three remaining meetings scheduled for 2000:

1. OCTOBER 12, 2000

- (a) Loss Costs/Assigned Risk Plan Ms. Hughes reminded the members that the Advisory Council is required to submit a report to the General Assembly on the impact of the loss costs system and the assigned risk plan by January 1, 2001 and discussed generally what information could be included in the report and the information which could be solicited from other parties.
- (b) Status Report from Department of Labor and Workforce Development The issues still pending include the status of the workers' compensation computer system, the Statistical Data Form, civil and criminal penalties for noncompliant employers and the settlement and mediation of Second Injury Fund cases.

2. NOVEMBER 16, 2000

- (a) Consideration of Certification of Claims Adjusters Discussion of Georgia program [Department of Labor and Workforce Development]
- (b) Consideration of Chiropractor Study Ms. Hughes reported the statute which was enacted in the 2000 legislative session that requires back injury claimants to be provided a panel of four physicians, including one chiropractor also requires the Advisory Council to conduct a study of the statute's effect.

3. DECEMBER 14, 2000

- (a) Approval of Loss Costs Report
- (b) UCC/Article 9 Implications Ms. Hughes explained the statute enacted in the 2000 legislative session which re-wrote Article 9 contains language which some believe to impact the non-assignability of workers' compensation benefits contained in the workers' compensation law.
- (c) Home Health Services Ms. Hughes explained current law requires any medical

care provided in the home must be provided by a licensed home health agency and some have questioned whether this law should also be applicable to workers' compensation cases.

(d) Recommendations for Legislation

Following this discussion, Mr. Pitts requested an update on the assigned risk plan be added to the agenda for the October meeting.

3. TRIAL STUDY

Mr. Dave Wilstermann, Advisory Council statistical analyst, presented a report on Tennessee workers' compensation trial judgments. The data came from trials concluded in calendar years 1996 through 1998. A total of 1,691 trial judgments were used in the analysis. The major findings were:

- Average weekly compensation rates have steadily increased from \$256.60 in 1996 to \$301.28 in 1998. Differences between judicial districts were statistically significant, meaning that Tennessee workers' incomes varied significantly when comparing judicial district to judicial district throughout the state. The highest income districts contained major production facilities such as Goodyear, Saturn, Nissan and Lockheed Martin. Weekly compensation rates are important to review because income directly affects the amount of permanent disability awarded.
- The average length of time between the date of injury and date of trial has increased from 2 years in 1996 to 2.4 years in 1998. Differences between judicial districts for the length of time from injury to trial were statistically significant. [Please note this calculation is from the date of injury *not* from the date on which the complaint was filed.]
- For body as whole trials where the injured worker returned to work, the 2.5 times cap for PPD [permanent partial disability] multipliers as stated in §50-6-241 has been fully implemented into the workers' compensation system and is being applied uniformly throughout the state. (The PPD multiplier is the ratio of the PPD judgment percent to the **highest** permanent partial impairment rating given by a physician in each case.)
- There were no differences between judicial districts for both body as a whole and scheduled member judgments where the employee did not return to work.
- For scheduled member trials where the employee returned to work, differences between judicial districts for PPD multipliers were statistically significant. It appears that some judgments are being subjected to an 2.5 times multiplier cap and some are not. Scheduled member judgments have no statutory multiplier cap, they are capped by the number of weeks of disability as set forth in §50-6-207.

Following the presentation by Mr. Wilstermann, the Advisory Council meeting was adjourned at 3:40 p.m.